IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

S.B.Civil Misc. Appeal No.1742/2001
S.B. Civil Misc. Stay Application No. 2749/2001
(Ibrahim & Anr. Versus Smt. Mathura Devi & Ors.)

S.B. Civil Misc. Appeal No. 1301/2001
(Smt. Mathura Devi & Ors. Versus Ibrahim & Ors.)

DATE OF JUDGMENT : 15.04.2015

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. M. Iqbal Khan, counsel for the non claimants appellants in CMA No. 1742/2001
Mr. CP Sharma, counsel for the claimants
Mrs. Archna Mantri, counsel for the Insurance Co.

Since both these appeals relate to one incident and arise out of the common judgment and award passed by the Tribunal, hence the arguments have been heard together and they are being decided by this common judgment.

Brief facts of the case are that the claimants filed claim petitions before the Tribunal with regard to death of Maman Singh in a road accident which is said to have taken place on 7.4.1999. Thereafter notices were issued; reply was filed; certain issues were framed and after hearing all the parties, the learned Tribunal passed the judgment and award dated 29.3.2001 decreeing an amount of Rs. 3,90,000/- as compensation in favour of claimants and the non claimants no. 1 and 2 i.e. driver and owner of the offending vehicle

were held liable to pay the compensation, whereas the Insurance co. was exonerated to pay the quantum of compensation.

Being aggrieved and dissatisfied with the aforesaid amount of compensation, both these appeals have been filed: one by the non claimants and another by claimants for enhancement of compensation.

Learned counsel for the non claimants has contended that the learned Tribunal has passed the impugned award against the appellants holding that as per the conditions of policy, Ibrahim was not holding any effective driving license at the time of accident. He has further contended that the policy clause can be divided into three parts. The first part refers to a person holding an effective driving license at the time of the accident. The second part refers to the disqualification of such person from holding it. Even after obtaining a license, a person may get disqualified under the provisions of the Act from holding it and such a person will be governed by the second part. The third part refers to persons who are disqualified from obtaining such a license. The first part cannot go together with the third part. In other words, if a person is having an

effective driving license, he cannot be said to be disqualified from obtaining such a license. He has further contended that admittedly from the facts of the case, the driver Ibrahim had renewed the driving license on 5.8.1999 itself, which shows that he was not disqualified. The burden has not been discharged by the Insurance co. in this case. Therefore, the impugned judgment and award is liable to be set-aside against the appellants.

The learned counsel for the claimants has contended that Tribunal has not properly appreciated the oral as well as documentary evidence available on record. He has further contended that the finding of the Tribunal is perverse and based on a wrong notion overlooking the settled proposition of law and awarded a very meager amount of compensation. Hence the impugned judgment passed by the Tribunal deserves to be modified.

On the other hand, learned counsel for the Insurance Co. defended the impugned judgment and stated the same to be just and proper. She has further contended that the Tribunal on the basis of material available on record, framed the issues and rightly decided the them. Hence, no interference is required by this Court.

I have heard learned counsel for the parties and carefully perused the impugned judgment and award.

Looking to the facts and circumstances of the case, the Tribunal is found to have dealt with each and every aspect of the matter and rightly passed the impugned judgment and award. I am in unison with the findings arrived at by the learned Tribunal, the relevant part of which is reproduced as under:

"इस प्रकार यह प्रथम दृष्टय स्पष्ट है कि ट्रेक्टर नं. आर.आर.ए. 9793 के चालक अप्रार्थी सं1 इब्राहिम ने उक्त ट्रेक्टर को गफलत, तेजी व लापरवाही से चलाकर दिनांक 7.4.99 को सईकिल पर बैठकर ज रहे मम्मनसिंह को पीछे से टक्कर मारी जिससे मम्मनसिंह की मृत्यु हो गई।

अतः इस विवाधक सं 1 का विनिश्चय प्रार्थीगण के पक्ष में तथा अप्रार्थीगण के विरूद्ध किया जाता है।

विवाधक सं2

अग्र प्रार्थीगण बतौर प्रतिकर मुतालिबा प्रार्थना प्रतिकर राशि व उस पर ब्याज प्राप्त करने के अप्रार्थीगण से अधिकारी हैं?

इस विवाधक को साबित करने का भार भी प्रार्थीगण पर था। प्रार्थीगण की ओर से प्रस्तुत साक्ष्य में ए.ड.1 मथुरादेवी जो मृतक की पत्नि है ने वेतन प्रमाण पत्र प्र.8 प्रस्तुत किया है जिसके अनुसार मृतक को 3400 रूपये वेतन मिलता था। ए.ड.2 करणसिंह व ए.ड.3 खुशराम अपने बयान में बताते हैं कि मृतक मम्मनसिंह वाटर वर्क्स में नौकरी करता था। मृतक पर उसकी पत्नि उम्र 32 साल व दो पुत्र क्रमशः बिजेन्द्र उम्र 10 साल व सुरेन्द्र 8 साल को निर्भर बताया गया है। प्र.8 वेतन प्रमाण पत्र जो सहायक अभियंता जन स्वास्थ्य अभियांत्रिकि विभाग उप खण्ड तिजारा के द्वारा जारी किया गया है उसके अनुसार उसके कुल वेतन 3388 रूपये प्रतिमाह मिलता था जिसमें धुलाई भत्ता व मकान किराया भत्ता भी शामिल है। इसके अनुसार मृतक के वारिसान को हुई आय में क्षति के लिए 3000 रूपये प्रतिमाह आय मान जाना न्यायोचित प्रतीत होता है।

पोस्टमार्टम रिपोर्ट प्र.4 के अनुसार मृतक की उम्र 35 साल बताई गई है। उस पर निर्भरत उसकी पत्नि उम्र 32 साल पुत्र बिजेन्द्र उम्र 10 साल व सुरेन्द्र उम्र 8 साल बताये गये हैं। इन परिस्थितियों में क्षतिपूर्ति राशि निर्धारित किये जाने हेतु 15 के गुणक का प्रयोग किया जाना न्यायोचित प्रतीत होती है।"

For these reasons, I do not think it just and proper to interfere in the impugned

judgment passed by the learned Tribunal and thus, the appeals filed by the non claimants and claimants, being without any substance, are hereby dismissed after confirming the judgment and award passed by the learned Tribunal.

The stay application also stands dismissed accordingly.

(MAHESH CHANDRA SHARMA)J.

All corrections made in the judgment / order have been incorporated in the judgment / order being E-mailed.

Dilip Khandelwal
PA